

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****RESOLUTION xxxx**

RESOLUTION AUTHORIZING (1) BOND PURCHASE AGREEMENT AMONG J.P. MORGAN SECURITIES LLC, THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY (AUTHORITY), THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT), THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT (SPECIAL TAX DISTRICT), AND THE CITY OF CHULA VISTA (CITY) FOR THE PURCHASE AND SALE OF TAXABLE AND TAX-EXEMPT BONDS ISSUED BY THE AUTHORITY, (2) AMENDMENT NO. 1 TO THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE DISTRICT AND CITY, (3) MUTUAL LEASE AND SUBLEASE ENFORCEMENT AGREEMENT BETWEEN THE DISTRICT AND CITY; (4) AMENDMENT INCREASING THE FISCAL YEAR (FY) 2019-2023 CAPITAL IMPROVEMENT PROGRAM (CIP) TO ADD THE SWEETWATER PARK PROJECT AND INITIAL FUNDING OF \$2,175,000 AND INCREASE CAPITAL LABOR BY \$700,000 TO BE FUNDED FROM RESTRICTED RESERVES FROM THE PACIFICA LAND EXCHANGE FEE; (5) CONTRIBUTE \$125,000 TO THE PUBLIC ART FUND FOR PUBLIC ART IN THE SWEETWATER PARK PROJECT PER BPC POLICY NO. 609 TO BE FUNDED FROM THE PACIFICA LAND EXCHANGE FEE RESTRICTED FUNDS; AND (6) AGREEMENT NO. 56-2021RH WITH KTU+A FOR SWEETWATER PARK DESIGN SERVICES FOR AN AMOUNT NOT TO EXCEED \$1,033,694.22 BUDGET FOR THIS AGREEMENT IS INCLUDED IN THE INITIAL FUNDING OF \$2,175,00 IN THE SWEETWATER PARK PROJECT IN THE FY 2019-2023 CIP

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

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WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance; and

WHEREAS, since 2014, the District and the City of Chula Vista (City) have been working to deliver the catalyst project for the Chula Vista Bayfront Master Plan (CVBMP), an approximately 250,000 square foot convention center (Convention Center), a parking garage (Parking Improvements), and an up to 1,600 room resort hotel (Resort Hotel) to be located on Parcel H3 of the CVBMP; and

WHEREAS, the catalyst project also requires the construction of extensive public infrastructure to the areas surrounding Parcel H3 (Phase 1A Improvements); and

WHEREAS, RIDA Chula Vista, LLC (RIDA) was selected as the developer of the Resort Hotel and Convention Center through a Request for Qualifications; and

WHEREAS, at the early stages, and in light of an overall project cost in excess of \$1.1 billion, it was determined that in order for the Convention Center and Phase 1A Improvements to be financially feasible, the City and the District would need to make a "Public Contribution" for the construction of the Convention Center and Phase 1A Improvements; and

WHEREAS, the District and the City formed the Chula Vista Bayfront Facilities Financing Authority (Authority) to issue bonds to finance most of the Public Contribution; and

WHEREAS, the Public Contribution consists of approximately \$265MM toward the cost of the Convention Center and approximately \$85MM toward the Phase 1A Improvements for a total public investment of \$350MM (from the proceeds of Authority Bonds (as defined below) and other sources); and

WHEREAS, in support of the Public Contribution, the Authority will issue taxable and tax-exempt bonds (collectively, the Authority Bonds) and the District and the City, as the sole members of the Authority, will commit certain funds to pay the debt service; and

WHEREAS, additional funding will be provided through grants, a contribution of \$25MM from the County of San Diego, a sewer contribution from

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the City through the City's Bayfront Development Impact Fee (BFDIF) program, and funds from the District that have been collected over time through various projects on the Chula Vista Bayfront, such as a contribution from the North C.V. Waterfront L.P. (Pacifica); and

WHEREAS, in addition to the Support Agreement between the Authority and the District (Support Agreement), approved by the Board of Port Commissioners (BPC), with conditions, at the February 11, 2021 BPC meeting, and the ground lease between the District and RIDA for the Resort Hotel and Parking Improvements (Hotel Ground Lease), approved by the BPC, with conditions, at the May 11, 2021 BPC meeting, the financing documents consist of (a) Indenture of Trust between the trustee (Trustee) and the Authority (Authority Indenture), (b) the Loan Agreement between the Bayfront Project Special Tax Financing District (Special Tax District) and the Authority (Loan Agreement) to allow for the use of Special Tax District funds to pay the debt service on the Authority Bonds (Loan Agreement), (c) the Facility Lease between the Authority and the City to allow the City to incorporate its funds to pay debt service (Facility Lease), and (d) the Bond Purchase Agreement among J.P. Morgan Securities LLC (JP Morgan), the Authority, the Special Tax District, and the City (Bond Purchase Agreement); and

WHEREAS, the Bond Purchase Agreement sets forth JP Morgan's obligation to purchase and sell the Authority Bonds; and

WHEREAS, the primary role of JP Morgan, as an underwriter, is to purchase the Authority Bonds, for resale to investors, in an arm's length commercial transaction between JP Morgan, as underwriter and the Authority, the City, the District and the Special Tax District; and

WHEREAS, JP Morgan's underwriting fee will be paid from the bond proceeds as a cost of issuance of the Authority Bonds when the Authority Bonds are issued; and

WHEREAS, the terms of the Bond Purchase Agreement will include conditions for the purchase and sale of the Authority Bonds and will require that each of the Authority, City, District, Special Tax District and RIDA provide certain information for inclusion in the offering documents to be prepared and used in the offering of the Authority Bonds, the Preliminary Official Statement and the Official Statement; and

WHEREAS, the terms of the Bond Purchase Agreement will require the Authority, the City, the District and Special Tax District to undertake an obligation to make "continuing" disclosure to the financial markets through the use of the MSRB EMMA website; and

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WHEREAS, staff recommends the BPC approve the Bond Purchase Agreement providing for the purchase and sale of the Authority Bonds by JP Morgan and the conditions to be satisfied by each party in connection with such purchase and sale, with conditions; and

WHEREAS, the BPC authorized the formation of the Authority on May 6, 2014 through the Joint Exercise of Powers Agreement filed in the Office of the District Clerk as Document No. 61905 (Original Authority Agreement); and

WHEREAS, the District and the City are the sole members of the Authority; and

WHEREAS, as the deal structure evolved, it became necessary to amend and restate the Original Authority Agreement to reflect developments that were relevant to the exercise of powers by the Authority; and

WHEREAS, the Original Authority Agreement was amended and restated effective as of July 25, 2019 and filed in the Office of the District Clerk as Document No. 70245 (Amended and Restated Authority Agreement); and

WHEREAS, under the proposed Amendment No. 1 to the Amended and Restated Authority Agreement (Authority Amendment), the District will be designated the "leasing manager" of the Authority to perform the administration of the Facility Lease between the Authority and the City (Facility Lease) and the Authority's third party beneficiary rights under the Sublease between the City and RIDA (Sublease) subject to certain rights of the City; and

WHEREAS, the Site Lease between the District and the Authority (Site Lease) covers the lease of the land on which the Convention Center will be constructed and requires that the Authority construct the Convention Center; and

WHEREAS, the District has a substantial interest in the administration and enforcement of certain of the provisions of the Sublease; and

WHEREAS, since the Authority is the owner of the Convention Center, it was not possible to insert the District as the direct enforcer of many of the operations and administrative type rights that the District would normally have as a landlord; and

WHEREAS, the City and the District agreed that the District would be placed into the role of the "leasing manager" under the Authority governing documents (similar to the role of a managing member with regard to day to day operations in a limited liability company context) with the ability to enforce these operations and administrative type issues on the Authority's behalf, except as to major decisions with respect to which the District would need to consult with the City before acting; and

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WHEREAS, to the extent the Site Lease, Facility Lease, and the Sublease will not cover all of the District's typical rights either as a direct third party beneficiary or as the enforcer of the Authority's third party beneficiary rights, the District will receive direct contractual rights against the other parties through the Project Implementation Agreement among the District, the City, the Authority, the Special Tax District, and RIDA (Project Implementation Agreement); and

WHEREAS, prior to the District or the City expending any costs related to the enforcement of its third party rights, the District and the City will enter into an agreement regarding how such costs will be reimbursed; and

WHEREAS, staff recommends that the BPC authorize the Authority Amendment and authorize the Executive Director of the District, or his designated representative, to enter into the Authority Amendment substantially in the form presented to the BPC at the June 15, 2021, BPC meeting, with conditions; and

WHEREAS, originally, the Hotel Ground Lease covered both the Convention Center and Resort Hotel; and

WHEREAS, this structure is reflective of the District's customary structure for hotel developments on tidelands; and

WHEREAS, as the business deal with RIDA and the City evolved, it became apparent that another structure was necessary to allow for the influx of funds needed to pay for the debt service (i.e., Facility Lease) and to recognize the contributions and roles of each of the parties in the overall Chula Vista Bayfront project; and

WHEREAS, under the revised structure, the Authority is subleasing the Convention Center and Convention Center land to the City pursuant to the Facility Lease; and

WHEREAS, the Facility Lease is the financing vehicle that the City will use to contribute their Lease Payments (as defined in the Facility Lease) and Pre-Completion Payments (as defined in the Facility Lease) to the payment of debt service; and

WHEREAS, the City will commit the following revenues, actually received, to pay the debt service on the Authority Bonds: (i) Portion of the revenues received by the City from the Municipal Services Agreement No. 88-2012 between the District and the City (MSA Revenues), (ii) Sales and Use Tax revenues from the Resort Hotel and Convention Center (Sales and Use Tax Revenues), (iii) Ad valorem property taxes levied by or allocated to the City from the Resort Hotel and Convention Center (Tax Increment Revenues), and (iv) Transient Occupancy Tax revenues from the Resort Hotel, Recreational Vehicle Park located in the CVBMP, and the Convention Center (TOT Revenues); and

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WHEREAS, the term of the Facility Lease is concurrent with the Site Lease; and

WHEREAS, the City will be subleasing to RIDA the Convention Center and Convention Center land in the form of the Sublease; and

WHEREAS, RIDA will construct the Convention Center as the Authority's contractor under the Project Implementation Agreement; and

WHEREAS, the Sublease mirrors many of the provisions of the Hotel Ground Lease; and

WHEREAS, some of the District's interests are memorialized within the Sublease as Port Sublease Third Party Beneficiary Provisions; and

WHEREAS, the District has a substantial interest in the administration and enforcement of certain of the provisions of the Sublease; and

WHEREAS, these substantial interests are memorialized as JEPA Sublease Third Party Beneficiary Provisions in the Sublease; and

WHEREAS, under the Sublease, the Authority is designated as an express third party beneficiary of certain rights that the District would enforce for the Authority as part of its administration of the operations and maintenance of the Facility Lease and Sublease; and

WHEREAS, the District will be the designated entity responsible for enforcing these provisions for the Authority; and

WHEREAS, the purpose of the Mutual Lease and Sublease Enforcement Agreement between the District and the City (Enforcement Agreement) is to memorialize the agreement between the District and the City to provide specific rights and procedures between the City and the District regarding the administration and enforcement of the City's interest in the Hotel Ground Lease and the District's interest in the Sublease; and

WHEREAS, the Enforcement Agreement outlines a process for notification of any breach by RIDA, consultation between the parties in the case of any breach, how to take an enforcement action against RIDA on any breach, how the parties enforce any action taken, and how to settle any enforcement actions; and

WHEREAS, prior to the District or the City expending any costs related to the enforcement of its third party rights, the District and the City will enter into an agreement regarding how such costs will be reimbursed; and

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WHEREAS, staff recommends that the BPC authorize the Enforcement Agreement and authorize the Executive Director of the District, or his designated representative, to enter into the Enforcement Agreement substantially in the form presented to the BPC at the June 15, 2021, BPC meeting, with conditions; and

WHEREAS, staff recommends the BPC establish a standalone Sweetwater Park Project and approve an amendment to the FY 2019-2023 Capital Improvement Program to add the Sweetwater Park project with initial funding of \$2,175,000 and increase capital labor by \$700,000 to be funded from restricted reserves from the Pacifica Land Exchange Fee; and

WHEREAS, staff recommends the BPC approve the contribution of \$125,000 to the Public Art Fund for public art in the Sweetwater Park Project per BPC Policy 609 to be funded from restricted reserves from the Pacifica Land Exchange Fee; and

WHEREAS, in July, the BPC authorized selection of KTU+A for Chula Vista Bayfront park design services including the design of Sweetwater Park; and

WHEREAS, with the establishment of the Sweetwater Park Project, staff recommends a standalone design agreement with KTU+A for the completion of the project design in the amount not to exceed \$1,033,694.22; and

WHEREAS, prior to or in connection with the issuance of the revenue bonds issued by the Authority (Authority Bonds), a number of documents will be executed and delivered including the Hotel Ground Lease, the Site Lease, the Facility Lease, the Sublease, the Bond Purchase Agreement, the Authority Indenture, the Loan Agreement, the Project Implementation Agreement, the Support Agreement, the Enforcement Agreement, the Authority Amendment, the Third Amended and Restated Revenue Sharing Agreement among the District, the City, and the Authority (Revenue Sharing Agreement), and the Amended and Restated Joint Community Facilities Agreement between the District and the City, and any exhibits thereto, such as the Completion Guaranty (as defined in the Project Implementation Agreement) (collectively, the Chula Vista Bayfront Documents); and

WHEREAS, the BPC has determined that it would be in the best interest of the people of the State of California, including the residents of the City, which will benefit from the facilities to be constructed by RIDA on tidelands for purposes consistent with the trusts upon which such lands are held pursuant to the Port Act, and it is in the best interest of the public for the BPC to approve financing of the Phase 1A Improvements and the Convention Center in the manner described herein with the proceeds of the Authority Bonds, which financing will provide significant public benefits of the type described in Section 6586 of the California Government Code.

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NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District (BPC) as follows:

1. That the foregoing recitals and findings are true and correct.
2. That the Bond Purchase Agreement among J.P. Morgan Securities LLC (JP Morgan), the Chula Vista Bayfront Facilities Financing Authority (Authority), the Bayfront Project Special Tax Financing District (Special Tax District), the San Diego Unified Port District (District), and the City of Chula Vista (City) providing for the purchase and sale of the tax-exempt and taxable bonds to be issued by the Authority (Authority Bonds) by JP Morgan and the conditions to be satisfied by each party in connection with such purchase and sale, is hereby approved substantially in the form of Exhibit A attached hereto (Bond Purchase Agreement), and that the Executive Director or his designated representative is hereby authorized to enter into said Bond Purchase Agreement in connection with the closing for the Authority Bonds, provided that the Bond Purchase Agreement executed by the Executive Director or his designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Bond Purchase Agreement attached hereto as Exhibit A and Item No. 5 below.
3. That Amendment No. 1 to the Amended and Restated Joint Exercise of Powers Agreement between the District and the City, is hereby approved substantially in the form of Exhibit B attached hereto (Authority Amendment), and that the Executive Director or his designated representative is hereby authorized to enter into said Authority Amendment in connection with the closing for the Authority Bonds, provided that the Authority Amendment executed by the Executive Director or his designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Authority Amendment attached hereto as Exhibit B and Item No. 5 below.
4. That the Mutual Lease and Sublease Enforcement Agreement between the District and City is hereby approved substantially in the form of Exhibit C attached hereto (Enforcement Agreement), and that the Executive Director or his designated representative is hereby authorized to enter into said Enforcement Agreement in connection with the closing for the Authority Bonds, provided that the Enforcement Agreement executed by the Executive Director or his designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Enforcement Agreement attached hereto as Exhibit C and Item No. 5 below.
5. The BPC hereby delegates to the Authorized Officers the authority to make and consent to changes to one or more of the Chula Vista Bayfront Documents to facilitate the financing and construction of the hotel to be

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constructed on Parcel H3 of the Chula Vista Bayfront Master Plan (Resort Hotel), the Phase 1A Improvements (as defined in the recitals), and the Convention Center (as defined in the recitals) which an Authorized Officer determines are needed (i) to eliminate any inconsistencies among any of the Chula Vista Bayfront Documents; (ii) to cure any ambiguity or defective provision in any of the Chula Vista Bayfront Documents; (iii) to respond to market conditions related to the structuring and marketing of the Authority Bonds as identified by the underwriter of the Authority Bonds (Underwriter), including, but not limited to, rating requirements; (iv) to reflect the final terms of the sale by the Underwriter of the Authority Bonds; and (v) to facilitate the required private financing for the Resort Hotel and Convention Center or otherwise necessary to facilitate the issuance of the Authority Bonds and the construction of the Resort Hotel, Phase 1A Improvements, and the Convention Center; provided, however that such changes shall not (x) increase the indemnification obligations of the District; (y) result in an additional contribution of funds by the District (except to a de minimis amount (not to exceed \$500,000 in total)); or (z) materially increase the obligations of the District, which changes shall be based on the advice of the General Counsel, and approved by an Authorized Officer through the Authorized Officer's execution (or as to documents to which the District is not a party, such Authorized Officer's written consent) of the Chula Vista Bayfront Documents incorporating the changes proposed, and shall be conclusively evidenced by the delivery by the District of the executed Chula Vista Bayfront Documents with the changes or its written consent to such changes, as applicable. For purposes of this Section 5, the "Authorized Officer" shall mean the Executive Director and his designated representatives and the "Chula Vista Bayfront Documents" shall be as defined in the recitals above.

6. That the Fiscal Year (FY) 2019-2023 Capital Improvement Program be amended to add the Sweetwater Park project with initial funding of \$2,175,000 and increase capital labor by \$700,000 to be funded from restricted reserves from the Pacifica Land Exchange Fee.
7. That the contribution of \$125,000 to the Public Art Fund for public art in the Sweetwater Park Project per BPC Policy 609 to be funded from restricted reserves from the Pacifica Land Exchange Fee is approved.
8. That Agreement No. 56-2021rh with KTUA for Sweetwater Park design services for an amount not to exceed \$1,033,694.22 is hereby approved and that the Executive Director or his designated representative is hereby authorized to enter into said agreement.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

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By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 15th day of June 2021, by the following vote:

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Exhibit A

Bond Purchase Agreement

(to be attached.)

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Exhibit B

Amendment No. 1 to Amended and Restated Joint Exercise of Powers
Agreement

(to be attached.)

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Exhibit C

Mutual Lease and Sublease Enforcement Agreement

(to be attached.)